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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No.140127076-4076-01]

RIN: 0605-AA33

Public Information, Freedom of Information Act and Privacy Act Regulations

AGENCY: Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes revisions to the Department of Commerce's (Department) regulations under the Freedom of Information Act (FOIA) and Privacy Act. The FOIA regulations are being revised to clarify, update and streamline the language of several procedural provisions, including methods for submitting FOIA requests and appeals and the time limits for filing an administrative appeal, and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007. Additionally, the FOIA regulations are being updated to reflect developments in the case law. The Privacy regulations are being revised to clarify, update and streamline several procedural provisions, including the methods for submitting appeals of Privacy Act requests and the time limits for filing a Privacy Act appeal. Additionally, the Privacy Act regulations are being updated to make technical changes to the applicable exemptions.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before *[insert date 30 days after date of publication in the Federal Register]*. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal

Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 0605-AA33, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 482-2552. Include the RIN 0605-AA33 in the subject line.
- *Mail:* Mark R. Tallarico, Senior Counsel, Office of the General Counsel, Department of Commerce, 1401 Constitution Avenue, NW, Room 5099, Washington, DC 20230.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to [regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Mark R. Tallarico, 202-482-8156, or Britt E. Carlson, 202-482-8155.

SUPPLEMENTARY INFORMATION:

Public Participation: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Department.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the

personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of the comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. If you wish to inspect the agency’s public docket file in person by appointment, please *see* the **FOR FURTHER INFORMATION CONTACT** paragraph.

Discussion

This rule proposes revisions to the Department’s regulations under the FOIA to clarify, update and streamline the language of several procedural provisions, including the methods for submitting FOIA requests and appeals and the time limits for responding to a request and filing an administrative appeal, and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110-175, 121 Stat. 2524. Additionally, the FOIA regulations are being updated to reflect developments in the case law.

Specifically this action would amend the procedures for filing requests and appeals for both the FOIA and the Privacy Act, and allow parties to use delivery services or file online through FOIAonline (<http://foiaonline.regulations.gov>). The rule will also vest the Office of the Inspector General’s (OIG) Counsel, rather than the Office of the Assistant General Counsel for Administration, with responsibility for addressing appeals for the OIG.

The Department further proposes to clarify when the 20-day statutory time limit for responding to requests begins (i.e., when requests are received by the proper DOC component’s FOIA office, when

requests are modified for purposes of reformulating a request so that it reasonably describes the requests sought). This rule would also clarify that certain inactions by a requester, such as his or her failure to respond to a component's one-time clarification request within 30 calendar days, failure to submit an agreement to pay anticipated fees in excess of \$20 within 30 calendar days of the component's fee estimate, failure to make an advanced payment within 30 calendar days of the component's fee estimate, may result in a request being closed. For FOIA appeals, the Department proposes to clarify that if the deadline for filing an administrative appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5 pm Eastern Time, the next business day will be deemed timely.

To implement the OPEN Government Act of 2007, the Department proposes to: (1) allow Department components to seek a one-time clarification of a request and toll the time period for responding to the request until the requester clarifies; (2) add a definition of "Representative of the news media, or news media requester" as defined in the OPEN Government Act; and (3) place limits on the fees charged when Department components do not comply with the statutory time limits under the FOIA.

This rule would modify the following Department FOIA regulations: § 4.1 (General Provisions), § 4.2 (Public reference facilities), § 4.3 (Records under the FOIA), § 4.4 (Requirements for making requests), § 4.5 (Responsibility for responding to requests), § 4.6 (Time limits and expedited processing), § 4.7 (Responses to requests), § 4.8 (Classified information), § 4.9 (Business information), § 4.10 (Appeals from initial determinations or untimely delays), and § 4.11 (Fees). In addition, new provisions implementing such changes are found at § 4.6(c) (Clarification of request), § 4.7(a) (Acknowledgment of requests), §§ 4.10(a)(1) and (2) and (b)(1)(2) (distinguishing where requesters should submit appeals from initial determinations or untimely delays), and § 4.11(d)(6) (Limitation on charging fees), with subsequent sections renumbered accordingly. Current § 4.2(c), § 4.2(d), and § 4.9(h)(1) are to be deleted and subsequent sections, if any, renumbered accordingly.

This rule also proposes revisions to the Department's regulations under the Privacy Act to clarify, update and streamline several procedural provisions, including the methods for submitting Privacy Act requests and appeals and the time limits for filing a Privacy Act appeal. In particular, the action will amend the

Department's Privacy Act regulations regarding applicable exceptions to reflect new Department wide systems of records notices published since the last time the regulations were updated, and to make requesting your own medical records from the Department easier. Many of the other changes mirror those made to the FOIA regulations in order to maintain consistency between the provisions. The revisions of the Privacy Act regulations in subpart B of part 4 incorporate changes to the language of the regulations in the following provisions: § 4.25 (Disclosure of requested records to individuals); § 4.26 (Special considerations: Medical records); § 4.28 (Agency review of requests for correction or amendment); § 4.29 (Appeal of initial adverse agency determination on correction or amendment); § 4.33 (General exemptions); and §4.34 (Specific exemptions).

Appendix A to part 4 is being revised to: update mailing addresses and telephone addresses of Department components for receipt and processing of requests for records under the FOIA and Privacy Act and requests for correction and amendment under the Privacy Act; include contact information for components receiving requests for records under the FOIA and Privacy Act and requests for correction and amendment under the Privacy Act; identify components maintaining public inspection facilities; and identify components maintaining separate online Electronic FOIA Libraries. Appendix B to part 4 is being revised to include an updated list of Department officials authorized to deny requests for records under the FOIA and Privacy Act and requests for correction or amendment under the Privacy Act.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chief Counsel for Regulation has reviewed this rule and certifies that this regulation, if implemented, will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. These fees are nominal, and therefore would not constitute a significant economic impact on a requester. Further, the number of "small entities" that make FOIA requests is relatively small compared to the number of individual requesters and other requesters who make such requests.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Office of Management and Budget has determined that this rule is not a “significant regulatory action” under Executive Order 12866, § 3(f), Regulatory Planning and Review.

Paperwork Reduction Act

This regulation does not contain a “collection of information” as defined by the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*

Lists of Subjects in 15 CFR Part 4

Appeals, Freedom of Information Act, Information, Privacy, Privacy Act

Dated: February 12, 2014

Catrina D. Purvis,
Chief Privacy Officer, and Director of Open Government.

For the reasons stated in the preamble, the Department of Commerce proposes to amend 15 CFR part 4 as follows:

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

The authority citation for part 4 continues to read as follows: Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

Subpart A—Freedom of Information Act

2. Amend § 4.1 by revising paragraph (a) to read as follows:

§ 4.1 General provisions.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the Department of Commerce (Department) and its components follow to make publicly available materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part. In addition, as a matter of policy, the Department may make discretionary releases of records or information exempt from disclosure under the FOIA when permitted to do so in accordance with current law and governmental policy. This policy does not create any right enforceable in court.

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3. Amend § 4.2 by revising the section heading, paragraphs (a) and (b) and removing paragraphs (c) and (d) to read as follows:

§ 4.2 Public reading rooms.

(a) Records that the FOIA requires to be made available for public inspection and copying are accessible electronically through the Department's "Electronic FOIA Library" on the Department's Web site, <http://www.doc.gov>, which includes links to Web sites for those components that maintain Electronic FOIA Libraries. These records may also be accessible at the FOIAonline Web site, <http://foiaonline.regulations.gov>. Each component of the Department is responsible for determining which of its records are required to be made available, as well as identifying additional records of interest to the public that are appropriate for disclosure, and for making those records available either in its own Electronic Library or in the Department's central Electronic FOIA Library. Components that maintain their own Electronic FOIA Library are designated as such in Appendix A to this part. Each component shall maintain and make available for public inspection and copying a current subject-matter index of the records made available electronically. Each component shall ensure that posted records and indices are updated regularly, at least quarterly.

(b) If the requester does not have access to the Internet and wishes to obtain information regarding publicly available information, he or she may contact the component's FOIA office. Appendix A to this part contains the contact information for the components' FOIA offices. Some components may also maintain physical public reading rooms. These components and their contact information are listed in Appendix A of this part.

4. Amend § 4.3 by revising paragraphs (a) through (c) to read as follows:

§ 4.3 Records under the FOIA.

(a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and electronic records and information, audiotapes, videotapes, Compact Disks, DVDs, and photographs.

(b) In response to a FOIA request, the Department has no obligation to create, compile, or obtain from outside the Department a record to satisfy a request (for example, extrapolating information from existing agency records, reformatting available information, preparing new electronic programs or databases, or creating data through calculations of ratios, proportions, percentages, trends, frequency distributions, correlations, or comparisons). In complying with a request for records (including data and other electronically-stored information), whether the Department creates or compiles records (as by undertaking significant programming work) or merely extracts them from an existing database is fact dependent. The Department shall undertake reasonable efforts to search for records stored in electronic format (including data and other electronically-stored information).

(c) Department officials may, upon request, create and provide new records to the public pursuant to statutes that authorize the creation and provision of new records for a fee, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. Such creation and provision of records is outside the scope of the FOIA.

* * * * *

5. Amend § 4.4 by revising paragraphs (a) through (c) to read as follows:

§ 4.4 Requirements for making requests.

(a) *How made and addressed.* The Department has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically either through electronic mail (e-mail) or the FOIAonline Web site, <http://www.foiaonline.regulations.gov>. A request for Department records that are not customarily made available to the public as part of the Department's regular informational services (or pursuant to a user fee statute), must be in writing and shall be processed under the FOIA, regardless of whether the FOIA is mentioned in the request. Requests must include the requester's full name and a legible return address. Requesters may also include other contact information, such as an e-mail address and a telephone number. For the quickest handling, the request (and envelope, if the request is mailed or hand delivered) should be marked "Freedom of Information Act Request." Requests may be submitted by U.S. mail, delivery service, e-mail, facsimile, or online at the FOIAonline Web site, <http://foiaonline.regulations.gov>. Requests made by mail, delivery service, e-mail, or facsimile should be sent to the Department component identified in Appendix A to this part that maintains those records requested, and should be sent to the addresses, e-mail addresses, or numbers listed in Appendix A to this part or the Department's Web site, <http://www.doc.gov>.¹ If the proper component cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. Requests will be considered received for purposes of the 20-day time limit of § 4.6 as of the date it is received by the proper component's FOIA office.

(b) *Requests for records about an individual or oneself.* For requests for records about oneself, § 4.24 of this part contains additional requirements. For requests for records about another individual, either written authorization signed by the individual permitting disclosure of his or her

¹ The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the Department of Commerce, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records, and any appeals thereof, should be sent directly to the USPTO.

records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) will facilitate processing the request.

(c) *Description of records sought.* A FOIA request must reasonably describe the agency records sought, to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record might be found. In addition, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions of the requested records should be included. As a general rule, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records. Before submitting their requests, requesters may contact the component's FOIA contact to discuss the records they are seeking and to receive assistance in describing the records (contact information for these individuals is contained in Appendix A to this part and on the Department's Web site, <http://www.doc.gov>). If a component determines that a request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or how the request is otherwise insufficient, to enable the requester to modify the request to meet the requirements of this section. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA contact. When a requester fails to provide sufficient detail after having been asked to reasonably describe the records sought, the component shall notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. In cases where a requester has modified his or her request, the date of receipt for purposes of the 20-day time limit of § 4.6 shall be the date of receipt of the modified request.

6. Amend § 4.5 by revising paragraphs (a) through (c) to read as follows:

§ 4.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the component that first receives the request and has responsive

records (or in the instance of where no records exist, the component that first receives the request and is likely to have responsive records), or the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request. Where a component's FOIA office determines that a request was misdirected within the Department, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s). Records responsive to a request shall include those records within the Department's possession and control as of the date the Department begins its search for them.

(b) *Consultations and referrals.* When a component receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency subject to the FOIA, the component shall refer the record to that agency for direct response to the requester (see § 4.8 for additional information about referrals of classified information). In instances where a record is requested that originated with the Department and another Federal agency has a significant interest in the record (or a portion thereof), the component shall consult with that Federal agency before responding to a requester. When a component receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency that is not subject to the FOIA, the component shall consult with that Federal agency before responding to the requester.

(c) *Notice of referral.* Whenever a component refers a record to another Federal agency for direct response to the requester, the component's FOIA Officer shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the record was referred.

* * * * *

7. Amend § 4.6 by redesignating paragraphs (c) through (f) as (d) through (g), revising paragraph (b) and newly redesignated paragraphs (d)(1) and (2), (e) and (f)(3), and adding new paragraph (c) to read as follows:

§ 4.6 Time limits and expedited processing.

* * * * *

(b) *Initial response and appeal.* Unless the component and the requester have agreed otherwise, or when “unusual circumstances” exist as provided for in paragraph (d) of this section, a determination whether to comply with a FOIA request shall be made by components within 20 working days (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper component identified in accordance with § 4.5(a). In instances involving misdirected requests that are re-routed pursuant to §4.5(a), the response time shall commence on the date that the request is received by the proper component, but in any event not later than ten working days after the request is first received by any designated component. An administrative appeal, other than an appeal from a request made to the Office of the Inspector General, shall be decided within 20 working days of its receipt by the Office of the General Counsel. An administrative appeal from a request made to the Office of the Inspector General shall be decided within 20 working days of its receipt by the Office of the Inspector General Office of Counsel. The Department’s failure to comply with the time limits identified in this paragraph constitutes exhaustion of the requester’s administrative remedies for the purposes of judicial action to compel disclosure.

(c) *Clarification of request.* Components may seek a one-time clarification of a request for a record (including clarification related to the scope of the request) under this part. The component shall notify the requester in writing of its clarification’s intentions. When a component seeks clarification of a request, the time for responding to a request set forth in § 4.6(b) is tolled until the requester responds to the clarification request. The tolling period will end when the component that sought the clarification receives a response from the requester. If a component asks for clarification and does not receive a written response from the requester within 30 calendar days from the date of the component’s clarification request, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

(d) *Unusual Circumstances.* (1) Components may extend the time period for processing a FOIA request only in “unusual circumstances,” as described in paragraph (d)(2) of this section, in which the component shall, before expiration of the twenty-day period to respond, notify the requester of the extension in

writing of the unusual circumstances involved and of the date by which processing of the request is expected to be completed. If the extension is for more than ten working days, the component shall provide the requester with an opportunity to modify the request or agree to an alternative time period for processing the original or modified request.

(2) For purposes of this section, *unusual circumstances* include:

(i) The need to search for and collect the requested agency records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need to consult with another Federal agency having a substantial interest in the determination of the FOIA request or among two or more components of the Department having substantial subject-matter interest in the determination of the request.

* * * * *

(e) *Multi-track processing.* (1) A component must use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including the amount of pages involved, and whether the request qualifies for expedited processing as described in paragraph (f) of this section.

(2) A component using multi-track processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. A component doing so shall contact the requester by telephone, e-mail, letter, or through the FOIAonline Web site, <http://foiaonline.regulations.gov>, whichever is the most efficient in each case.

(f) * * *

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (f)(1)(iv) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main

professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category described in paragraph (f)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request – one that extends beyond the public’s right to know about Government activity generally. The existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an “urgency to inform” the public on a topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

* * * * *

8. Amend § 4.7 by redesignating paragraphs (a) and (b) as (b) and (c), adding new paragraphs (a) and (d), and revising newly redesignated paragraphs (b) and (c) to read as follows:

§ 4.7 Responses to requests.

(a) *Acknowledgment of requests.* Upon receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall provide an assigned request number for further reference and, if necessary, confirm whether the requester is willing to pay fees.

(b) *Grants of requests.* If a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing of such determination and disclose records to the requester promptly upon payment of any applicable fees. Records disclosed in part shall be marked or annotated to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(c) *Adverse determinations of requests.* If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. An adverse determination is a denial of a request and includes decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has previously been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse

determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(d) *Content of denial.* The denial letter shall be signed by an official listed in Appendix B to this part (or a designee), and shall include:

- (1) The name and title or position of the person responsible for the denial;
- (2) A brief statement of the reason(s) for the denial, including any FOIA exemption(s) applied by the component in denying the request;
- (3) An estimate of the volume of any records or information withheld, by providing the number of pages or some other reasonable form of estimation. This estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and
- (4) A statement that the denial may be appealed under § 4.10 of this subpart, and a list of the requirements for filing an appeal set forth in §4.10(b).

9. Amend § 4.8 by revising it to read as follows:

§ 4.8 Classified information.

In processing a request for information classified under Executive Order 13526 or any other executive order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the component or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA exemption (b)(1) (5 U.S.C. 552(b)(1)), but should be reviewed to assess whether any other FOIA exemption should be invoked. Appeals involving classified information shall be processed in accordance with § 4.10(c).

10. Amend § 4.9 by revising paragraphs (c), (h) and (j) to read as follows:

§ 4.9 Business information.

* * * * *

(c) *Designation of business information.* A submitter of business information must use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA exemption (b)(4) of this section. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

* * * * *

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

- (1) The component determines that the information is exempt under a FOIA exemption, other than exemption (b)(4);
- (2) The information has been lawfully published or has been officially made available to the public;
- (3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or
- (4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, except that, in such a case, the component shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.

* * * * *

(j) *Corresponding notice to requester.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall notify the requester that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response. The notice to the requester will not include any of the specific information contained in the records being requested. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester of such action and, as a consequence, there may be further delay in receiving a response.

* * * * *

11. Amend § 4.10 by revising paragraphs (a) through (c) to read as follows:

§ 4.10 Appeals from initial determinations or untimely delays.

(a)(1) If a request for records to a component other than the Office of Inspector General is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse determination regarding any other matter listed under this subpart (as described in § 4.7(c)), the requester may file an appeal. Appeals can be submitted in writing or electronically, as described in paragraph (b)(1) of this section. The appeal must be received by the Office of the General Counsel during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 30 calendar days of the date of the written denial of the adverse determination or, if there has been no determination, an appeal may be submitted any time after the due date, including the last extension under § 4.6(d), of the adverse determination. Written or electronic appeals arriving after normal business hours will be deemed received on the next normal business day. If the 30th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. Appeals received after the 30-day limit will not be considered.

(2) If a request for records to the Office of Inspector General is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse determination regarding any other matter listed under this subpart (as described in § 4.7(c)), the requester may file an appeal. Appeals can be submitted in writing or electronically, as described in paragraph (b)(2) of this section. The appeal must be received by the Office of Inspector General, Office of Counsel, during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 30 calendar days of the date of the written denial of the adverse determination or, if there has been no determination, an appeal may be submitted any time after the due date, including the last extension under § 4.6(d), of the adverse determination. Written or electronic appeals arriving after normal business hours will be deemed received on the next normal business day. If the 30th calendar day falls on a Saturday, Sunday, or a legal

public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. Appeals received after the 30-day limit will not be considered.

(b)(1) Appeals, other than appeals from requests made to the Office of Inspector General, shall be decided by the Assistant General Counsel for Administration (AGC-Admin), except that appeals for records which were initially denied by the AGC-Admin shall be decided by the General Counsel. Written appeals should be addressed to the AGC-Admin, or the General Counsel if the records were initially denied by the AGC-Admin. The address of both is: U.S. Department of Commerce, Office of the General Counsel, Room 5875, 14th and Constitution Avenue, NW, Washington DC 20230. An appeal may also be sent via facsimile at 202-482-2552. For a written appeal, both the letter and the appeal envelope should be clearly marked "Freedom of Information Act Appeal." Appeals may also be submitted electronically either by e-mail to FOIAAppeals@doc.gov or online at the FOIAonline Web site, <http://foiaonline.regulations.gov>, if requesters have a FOIAonline account. In all cases, the appeal (written or electronic) must include a copy of the original request and initial denial, if any. All appeals must include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, AGC-Admin, or the General Counsel if the records were initially denied by AGC-Admin, ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

(2) Appeals of initial and untimely determinations by the Office of Inspector General shall be decided by the Counsel to the Inspector General, except that appeals for records which were initially denied by the Counsel to the Inspector General shall be decided by the Deputy Inspector General. Written appeals should be addressed to the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General. The address of both is: U.S. Department of Commerce, Office of Counsel, Room 7898C, 14th and Constitution Avenue, NW, Washington DC 20230. An appeal may also be sent via facsimile at 202-501-7335. For a written appeal, both the letter and the appeal envelope should be clearly marked "Freedom of Information Act Appeal."

Appeals may also be submitted electronically either by e-mail to FOIA@oig.doc.gov or online at the FOIAonline Web site, <http://foiaonline.regulations.gov>, if requesters have a FOIAonline account. In all cases, the appeal (written or electronic) must include a copy of the original request and initial denial, if any. All appeals must include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General, ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

(c) Upon receipt of an appeal involving records initially denied on the basis of FOIA exemption (b)(1), the records shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part if continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the AGC-Admin, the General Counsel, Counsel to the Inspector General, or Deputy Inspector General, as appropriate, of his or her decision.

12. Amend § 4.11 by:

- a. Revising paragraphs (a), (b)(2)-(4), (b)(6) and (7), (c)(2), (c)(3)(ii), (c)(4), (d)(1) and paragraph (i);
- b. Adding subparagraphs (1) and (2) to paragraph (e);
- c. Redesignating paragraphs (j) and (k) as (k) and (l); and
- d. Adding a new paragraph (j).

The changes to read as follows:

§ 4.11 Fees.

(a) *In general.* Components shall charge fees for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or when a waiver or reduction is granted under paragraph (k) of this section. A component shall collect all

applicable fees before processing a request if a component determines that advance payment is required in accordance with paragraphs (i)(2) and (i)(3) of this section. If advance payment of fees is not required, a component shall collect all applicable fees before sending copies of requested records to a requester.

Requesters must pay fees by check or money order made payable to the Treasury of the United States.

* * * * *

(b)(2) *Direct costs* means those expenses a component incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16% of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, heating, or lighting of the facility in which the service is performed.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records, among others. A component shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category, a request must serve the scholarly research goal of the institution rather than an individual research goal.

Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional letterhead.

Example 3. A student who makes a request in furtherance of the completion of a course of instruction would be presumed to be carrying out an individual research goal, rather than a scholarly research goal of the institution, and would not qualify as part of this fee category.

* * * * *

(6) *Representative of the news media, or news media requester*, means any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at-large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public including news organizations that disseminate solely on the Internet. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. A component’s decision to grant a requester media status will be made on a case-by-case basis based upon the requester’s intended use of the material.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of

redacting it and marking any applicable exemptions. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent obtaining and considering any formal objection to disclosure made by a business submitter under § 4.9, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

* * * *

(c) * * *

(2) Uniform fee schedule.

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Review of records	Actual salary rate of employee conducting review, plus 16 percent of salary rate.
(iv) Duplication of records:	
(A) Paper copy reproduction	\$.16 per page
(B) Other reproduction (e.g., converting paper into an electronic format (e.g., scanning), computer disk or printout, or other electronically-formatted reproduction (e.g., uploading records made available to the requester into FOIAonline)).	Actual direct cost, including operator time.

* * * *

(3) * * *

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to search for responsive records, as well as the costs of the operator/programmer salary apportionable to the search.

(4) *Duplication.* Duplication fees shall be charged to all requesters, subject to the limitations of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily producible by the component in the form or format requested. For either a photocopy or a computer-generated printout of a record (no more than one copy of which need be

supplied), the fee shall be \$.16 per page. Requesters may reduce costs by specifying double-sided duplication, except where this is technically not feasible. For electronic forms of duplication, other than a computer-generated printout, components will charge the direct costs of that duplication. Such direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy, to the extent they can be determined.

* * * * *

(d) * * *. (1) No search fees shall be charged for requests from educational institutions, non-commercial scientific institutions, or representatives of the news media.

* * * * *

(6) No search fees shall be charged to a FOIA requester when a component does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

(7) No duplication fees shall be charged to requesters in the fee category of a representative of the news media or an educational or noncommercial scientific institution when a component does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

* * * * *

(e) *Notice of anticipated fees in excess of \$20.00.* (1) When a component determines or estimates that the fees for processing a FOIA request will total more than \$20.00 or total more than the amount the requester indicated a willingness to pay, the component shall notify the requester of the actual or estimated amount of the fees, unless the requester has stated in writing a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. A notice under this paragraph shall

offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost.

(2) When a requester has been notified that the actual or estimated fees will amount to more than \$20.00, or amount to more than the amount the requester indicated a willingness to pay, the component will do no further work on the request until the requester agrees in writing to pay the actual or estimated total fee.

The component will toll the processing of the request while it notifies the requester of the actual or estimated amount of fees and this time will be excluded from the twenty (20) working day time limit (as specified in section 4.6(b)). The requester's agreement to pay fees must be made in writing, must designate an exact dollar amount the requester is willing to pay, and must be received within 30 calendar days from the date of the notification of the fee estimate. If the requester fails to submit an agreement to pay the anticipated fees within 30 calendar days from the date of the component's fee notice, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

* * * * *

(i)(1) *Advance payments.* For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment (*i.e.*, a payment made before a component begins to process or continues work on a request). Payment owed for work already completed (*i.e.*, a pre-payment before copies of responsive records are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that the total fee for processing a FOIA request will be \$250.00 or more, the component shall notify the requester of the actual or estimated fee and require the requester to make an advance payment of the entire anticipated fee before beginning to process the request. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost.

(3) When a requester has previously failed to pay a properly charged FOIA fee to any component or other Federal agency within 30 calendar days of the date of billing, the component shall notify the requester that he or she is required to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost.

(4) When the component requires advance payment or payment due under paragraphs (i)(2) and (i)(3) of this section, the component will not further process the request until the required payment is made. The component will toll the processing of the request while it notifies the requester of the advanced payment due and this time will be excluded from the twenty (20) working day time limit (as specified in section 4.6(b)). If the requester does not pay the advance payment within 30 calendar days from the date of the component's fee notice, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

(j) *Tolling*. When necessary for the component to clarify issues regarding fee assessment with the FOIA requester, the time limit for responding to the FOIA request is tolled until the component resolves such issues with the requester.

* * * * *

13. Amend § 4.25 by revising paragraph (g)(1) to read as follows:

§ 4.25 Disclosure of requested records to individuals.

* * * * *

(g) *** (1) *Grounds*. Access by an individual to a record that pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under § 4.33 or 4.34, or exempt by determination of another agency publishing notice of the system of records, as described in § 4.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 4.26 pertaining to medical records have been invoked; or

(iv) The individual unreasonably has failed to comply with the procedural requirements of this part.

* * * * *

14. Revise § 4.26 to read as follows:

§ 4.26 Special procedures: Medical records.

When a request for access involves medical or psychological records, the records will be reviewed by the Department's medical officer for a determination on whether disclosure would be harmful to the individual to whom they relate. If it is determined that disclosure would be harmful, the Department may refuse to disclose the records directly to the requester but shall transmit them to a doctor authorized in writing by the individual to whom the records relate to receive the documents.

If an individual refuses to provide written authorization to release his or her medical records to a doctor, barring any applicable exemption, the Department shall give the individual access to his or her records by means of a copy, provided without cost to the requester, sent registered mail, return receipt requested.

15. Amend § 4.28 by revising paragraph (a)(1)(ii) and (a)(2) to read as follows:

§ 4.28 Agency review of requests for correction or amendment.

* * * * *

(a)***

(1) * * *

(ii) If the Privacy Officer fails to send the acknowledgment within ten working days, as provided in paragraph (a)(1)(i) of this section, the requester may ask the Assistant General Counsel for Administration, or in the case of a request to the Office of the Inspector General, the Counsel to the Inspector General, to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten working days, the Privacy Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or, in cases in which a copy cannot be provided, a statement as to the means by which the correction or amendment was effected; or

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this subpart; and

(D) The procedures for appeal of the denial as set forth in § 4.29, including the address of the Assistant General Counsel for Administration, or in the case of a request to the Office of the Inspector General, the address of the Counsel to the Inspector General.

* * * * *

16. Amend § 4.29 by revising paragraphs (a), (b), (c), (e), the introductory text to (g),(g)(1), (h), and (i) to read as follows:

§ 4.29 Appeal of initial adverse agency determination on correction or amendment.

(a) If a request for correction or amendment is denied initially under § 4.28, the individual may submit a written appeal within thirty calendar days of the date of the initial denial. The appeal must be received by the General Counsel, or by the Counsel to the Inspector General in the case of an appeal of an initial adverse determination by the Office of Inspector General, during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 30 calendar days of the date of the initial denial. Appeals arriving after normal business hours will be deemed received on the next normal business day. If

the 30th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

(b)(1) An appeal from a request to a component other than the Office of the Inspector General should be addressed to the Assistant General Counsel for Administration, U.S. Department of Commerce, Room 5875, 14th and Constitution Avenue, NW, Washington, DC 20230. An appeal should include the words “Privacy Act Appeal” at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the Assistant General Counsel for Administration. An appeal which is not properly addressed by the individual will not be deemed to have been “received” for purposes of measuring the time periods in this section until actual receipt by the Assistant General Counsel for Administration. In each instance when an appeal so forwarded is received, the Assistant General Counsel for Administration shall notify the individual that his or her appeal was improperly addressed and the date on which the appeal was received at the proper address.

(2) An appeal of an initial adverse determination on correction or amendment by the Office of Inspector General should be addressed to the Counsel to the Inspector General, U.S. Department of Commerce, Room 7898C, 14th and Constitution Avenue, NW, Washington DC, 20230. An appeal should include the words “Privacy Act Appeal” at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the Counsel to the Inspector General. An appeal which is not properly addressed by the individual will not be deemed to have been “received” for purposes of measuring the time periods in this section until actual receipt by the Counsel to the Inspector General. In each instance when an appeal so forwarded is received, the Counsel to the Inspector General shall notify the individual that his or her appeal was improperly addressed and the date on which the appeal was received at the proper address.

(c) The individual’s appeal shall be signed by the individual, and shall include a statement of the reasons for why the initial denial is believed to be in error, and the Department’s control number assigned to the

request. The Privacy Act Officer who issued the initial denial shall furnish to the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, to the Counsel to the Inspector General, the record(s) the individual requests to be corrected or amended, and all correspondence between the Privacy Officer and the requester. Although the foregoing normally will comprise the entire record on appeal, the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, may seek any additional information necessary to ensure that the final determination is fair and equitable and, in such instances, disclose the additional information to the individual to the greatest extent possible, and provide an opportunity for comment thereon.

* * * * *

(e) The Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall act upon the appeal and issue a final determination in writing not later than thirty working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays) from the date on which the appeal is received, except that the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will be issued. The estimated date should not be later than the sixtieth day after receipt of the appeal unless unusual circumstances, as described in § 4.25(a), are met.

* * * * *

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination shall inform the individual that:

(1) The individual has a right under the Act to file with the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, a concise statement of reasons for disagreeing with the final determination. The

statement ordinarily should not exceed one page and the Department reserves the right to reject an excessively lengthy statement. It should provide the Department control number assigned to the request, indicate the date of the final determination and be signed by the individual. The Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall acknowledge receipt of such statement and inform the individual of the date on which it was received;

* * * * *

(h) In making the final determination, the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall employ the criteria set forth in § 4.28(c) and shall deny an appeal only on grounds set forth in § 4.28(e).

(i) If an appeal is partially granted and partially denied, the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

17. Amend § 4.33 by revising paragraph (b) introductory text and (b)(1) to read as follows:

§ 4.33 General exemptions.

* * * * *

(b) The general exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) *Individuals identified in Export Transactions*—COMMERCE/BIS-1. Pursuant to 5 U.S.C. § 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. § 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the

evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid endangering law enforcement personnel. Section 12(c) of the Export Administration Act of 1979, as amended, also protects this information from disclosure.

* * * * *

18. Amend § 4.34 by revising paragraphs (a)(1), (b) introductory text, (b)(2)(i), (b)(3)(i) and (b)(4)(i) to read as follows:

§ 4.34 Specific exemptions.

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the Federal Register by the Department that are within this exemption are:

COMMERCE/BIS-1, COMMERCE/ITA-2, COMMERCE/ITA-3, COMMERCE/NOAA-11, COMMERCE-PAT-TM-4, COMMERCE/DEPT-12, COMMERCE/DEPT-13, and COMMERCE/DEPT-14.

* * * * *

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

* * * * *

(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Individuals identified in Export Administration compliance proceedings or investigations—COMMERCE/BIS-1, but only on condition that the general exemption claimed in § 4.33(b)(1) is held to be invalid;

* * * * *

(3)(i) Exempt under 5 U.S.C. § 552a(k)(4). The systems of records exempt, the sections of the Act from which exempted, and the reasons therefor are as follows:

- (A) Special Censuses, Surveys, and Other Studies—COMMECE/CENSUS-3;
- (B) Economic Survey Collection—COMMERCE/CENSUS-4;
- (C) Decennial Census Program—COMMERCE/CENSUS-5;
- (D) Population Census Records for 1910 & All Subsequent Decennial Census—
COMMERCE/CENSUS-6;
- (E) Other Agency Surveys & Reimbursable—COMMERCE/CENSUS-7;
- (F) Statistical Administrative Records System—COMMERCE/CENSUS-8;
- (G) Longitudinal Employer-Household Dynamics System—COMMERCE/CENSUS-9; and
- (H) Foreign Trade Statistics—COMMERCE/CENSUS-12.

* * * * *

(4)(i) Exempt under 5 U.S.C. § 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

- (A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA-1;
- (B) USMMA Midshipman Medical Files—COMMERCE/MA-17;
- (C) USMMA Midshipman Personnel Files—COMMERCE/MA-18;
- (D) USMMA Non-Appropriated Fund Employees—COMMERCE/MA-19;
- (E) Applicants for the NOAA Corps—COMMERCE/NOAA-1;
- (F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA-3;
- (G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT-3
- (H) Investigative and Inspection Records—COMMERCE/DEPT-12, but only on condition that
the general exemption claimed in § 4.33(b)(3) is held to be valid;
- (I) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—
COMMERCE/DEPT-13; and
- (J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT-14.

* * * * *

19. Revise Appendix A to Part 4 to read as follows:

Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment under the Privacy Act

Each address listed below is the respective component’s mailing address for receipt and processing of requests for records under the Freedom of Information Act and Privacy Act, for requests for correction or amendment under the Privacy Act and, unless otherwise noted, its public inspection facility for records available to the public under the Freedom of Information Act. Requests should be addressed to the component the requester knows or has reason to believe has possession of, control over, or primary concern with the records sought. Otherwise, requests should be addressed to the Departmental FOIA Office identified in subparagraph (1), below. The telephone and facsimile numbers for each component are included after its address, as well as e-mail addresses for components that maintain an e-mail address for the purposes of receiving of FOIA and Privacy Act requests. Records of components that are required to be made publicly available are available electronically either through the Department’s “Electronic FOIA Library” on the Department’s Web site, <http://www.doc.gov>, as described in § 4.2(a), or the component’s separate online Electronic FOIA Library as indicated below. Components that maintain a public inspection facility are designated as such below. These public inspection facilities records are open to the public Monday through Friday (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) between 9:00 a.m. and 4:00 p.m. local time of the facility at issue. The Departmental Freedom of Information Act Officer is authorized to revise this appendix to reflect changes in the information contained in it. Any such revisions shall be posted on the Department’s “FOIA Home Page” link found at the Department’s Web site, <http://www.doc.gov>.

(1) U.S. Department of Commerce, Office of Privacy and Open Government, Departmental FOIA Office, 14th and Constitution Avenue, NW, Mail Stop A300, Washington, DC 20230;

Phone: (202) 482-3258; Fax: (202) 482-0827; E-mail: EFOia@doc.gov; FOIAonline:

<http://foiaonline.regulations.gov>. This component maintains an online Electronic FOIA Library through the Department's Web site, <http://www.doc.gov>. This online Electronic FOIA Library serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below that do not have separate online Electronic FOIA Libraries.

(2) Bureau of the Census, Policy Coordination Office, U.S. Department of Commerce, Room 8H027, 4600 Silver Hill Road, Suitland, Maryland 20233; Ph.: (301) 763-6440; Fax: (301) 763-6239 (ATTN.: FOIA Office); E-mail: cemsus.foia@census.gov; FOIAonline:

<http://foiaonline.regulations.gov>. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.census.gov>.

(3) Bureau of Economic Analysis/Economic and Statistics Administration, Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Mail Stop H4836, Washington, DC 20230; Ph.: (202) 482-5997; Fax: (202) 482-2889; E-mail: EFOIAESA@doc.gov; FOIAonline: <http://foiaonline.regulations.gov>. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.esa.doc.gov>.

(4) Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Mails Stop H6622, Washington, DC 20230; Ph.: (202) 482-0953; Fax: (202) 482-0326; E-mail: efoiarequest@bis.doc.gov; FOIAonline: <http://foiaonline.regulations.gov>. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.bis.doc.gov>.

(5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 7325, Washington, DC 20230; Ph.: (202) 482-3085; Fax: (202) 482-5671; FOIAonline: <http://foiaonline.regulations.gov>. This component does not maintain a separate online Electronic FOIA Library, nor do any of the following Regional EDA offices.

- (i) Atlanta Regional Office, EDA, U.S. Department of Commerce, 401 West Peachtree Street, NW, Suite 1820, Atlanta, Georgia 30308; Ph.: (404) 730-3006.

- (ii) Austin Regional Office, EDA, U.S. Department of Commerce, 504 Lavaca Street, Suite 1100, Austin, Texas 78701; Ph.: (512) 381-8165.
 - (iii) Chicago Regional Office, EDA, U.S. Department of Commerce, 111 North Canal Street, Suite 855, Chicago, Illinois 60606; Ph.: (312) 353-8143.
 - (iv) Denver Regional Office, EDA, U.S. Department of Commerce, 410 17th Street, Suite 250, Denver, Colorado 80202; Ph.: (303) 844-4404.
 - (v) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Curtis Center, Suite 140 South, 601 Walnut Street, Philadelphia, Pennsylvania 19106; Ph.: (215) 597-7896.
 - (vi) Seattle Regional Office, EDA, U.S. Department of Commerce, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174; Ph.: (206) 220-7663.
- (6) International Trade Administration, Office of Strategic Resources, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 40003, Washington, DC 20230; Ph.: (202) 482-7937; Fax: (202) 482-1584; E-mail: foia@trade.gov; FOIAonline: <http://foiaonline.regulations.gov>. This component does not maintain a separate online Electronic FOIA Library.
- (7) Minority Business Development Agency, Office of Administration and Employee Support Services, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 5092, Washington, DC 20230; Ph.: (202) 482-2419; Fax: (202) 482-2500; E-mail: FOIA@mbda.gov; FOIAonline: <http://foiaonline.regulations.gov>. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.mbda.gov>.
- (8) National Institute of Standards and Technology, Management and Organization Office, U.S. Department of Commerce, 100 Bureau Drive, Mail Stop 1710, Gaithersburg, Maryland 20899-1710; Ph.: (301) 975-4054; Fax: (301) 926-8091; E-mail: foia@nist.gov; FOIAonline: <http://foiaonline.regulations.gov>. This component maintains a separate public inspection facility at the Administration Building, Gaithersburg, Maryland. Please call (301) 975-4054 for inspection facility directions and hours. This component does not maintain a separate online Electronic FOIA Library.
- (9) National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1315

East-West Highway (SSMC3), Room 9719, Silver Spring, Maryland 20910; Ph.: (301) 628-5658; Fax: (301) 713-1169; E-mail: foia@noaa.gov; FOIAonline: <http://foiaonline.regulations.gov>. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.noaa.gov>.

(10) National Technical Information Service, Office of the Chief Information Officer, U.S. Department of Commerce, 5301 Shawnee Road, Room 227, Alexandria, Virginia 22312; Ph.: (703) 605-6710; Fax: (703) 605-6764; FOIAonline: <http://foiaonline.regulations.gov>. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.ntis.gov>.

(11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Mail Stop 4713, Washington, DC 20230; Ph.: (202) 482-1816; Fax: (202) 501-8013; E-mail: eFOIA@NTIA.doc.gov; FOIAonline: <http://foiaonline.regulations.gov>. This component does not maintain a separate online Electronic FOIA Library.

(12) Office of Inspector General, FOIA and Records Management Specialist, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 7099C, Washington, DC 20230; Ph.: (202) 482-3470; Fax: (202) 501-7921; E-mail: FOIA@oig.doc.gov; FOIAonline: <http://foiaonline.regulations.gov>. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.oig.doc.gov>.

20. Revise Appendix B to Part 4 to read as follows:

Appendix B to Part 4—Officials Authorized to Deny Requests for Records under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment under the Privacy Act

The officials of the Department listed below and their superiors have authority, with respect to the records for which each is responsible, to deny requests for records under the FOIA,² and requests for

² The foregoing officials have sole authority under § 4.7(c) to deny requests for records in any respect, including, for example, denying requests for reduction or waiver of fees.

records and requests for correction or amendment under the PA. In addition, the Departmental Freedom of Information Officer and the Freedom of Information Officer for the Office of the Secretary have the foregoing FOIA and PA denial authority for all records of the Department. The Departmental Freedom of Information Officer is authorized to assign that authority, on a case-by-case basis only, to any of the officials listed below, if the records responsive to a request include records for which more than one official listed below is responsible. The Departmental Freedom of Information Officer is authorized to revise this appendix to reflect changes in designation of denial officials. Any such revisions shall be posted on the Department's "FOIA Home Page" link found at the Department's Web site, <http://www.doc.gov>.

OFFICE OF THE SECRETARY

Office of the Secretary: Executive Secretary; Freedom of Information Officer

Office of Business Liaison: Director

Office of Public Affairs: Director; Deputy Director; Press Secretary; Deputy Press Secretary

Assistant Secretary for Legislative and Intergovernmental Affairs; Deputy Assistant Secretary for Legislative and Intergovernmental Affairs

Office of Inspector General: Deputy Inspector General; FOIA and Records Management Specialist;

Assistant Inspector General for Administration; Counsel to the Inspector General

Office of the General Counsel: Deputy General Counsel; Assistant General Counsel for Administration

Office of Executive Support: Director

Office of Chief Information Officer: Director

ASSISTANT SECRETARY FOR ADMINISTRATION

Office of Civil Rights: Director

Office of Budget: Director

Office of Privacy and Open Government: Director

Departmental Freedom of Information Officer

Office of Program Evaluation and Risk Management: Director

Office of Financial Management: Director

Office of Human Resources Management: Director; Deputy Director

Office of Administrative Services: Director

Office of Security: Director

Office of Acquisition Management: Director

Office of Acquisition Services: Director

Office of Small and Disadvantaged Business Utilization: Director

BUREAU OF INDUSTRY AND SECURITY

Under Secretary

Deputy Under Secretary

Director, Office of Administration

Director, Office of Planning, Evaluation and Management

Assistant Secretary for Export Administration

Deputy Assistant Secretary for Export Administration

Director, Office of Strategic Industries and Economic Security

Director, Director, Office of Nonproliferation Controls and Treaty Compliance

Director, Office of Exporter Services

Assistant Secretary for Export Enforcement

Deputy Assistant Secretary for Export Enforcement

Director, Office of Export Enforcement

Director, Office of Enforcement Analysis

Director, Office of Antiboycott Compliance

ECONOMICS AND STATISTICS ADMINISTRATION

Office of Administration: Director

Bureau of Economic Analysis: Director

Bureau of the Census: Freedom of Information Act Officer

ECONOMIC DEVELOPMENT ADMINISTRATION

Freedom of Information Officer

INTERNATIONAL TRADE ADMINISTRATION

Executive Administration

Under Secretary for International Trade

Deputy Under Secretary for International Trade

Chief Counsel for International Trade

Chief Counsel for Enforcement and Compliance

Trade Promotion Coordinating Committee Secretariat

Director, Office of Public Affairs

Director, Office of Legislative and Intergovernmental Affairs

Chief Information Officer

Deputy Chief Information Officer

Chief Administrative Officer, Office of the Chief Information Officer

Chief Financial and Administration Officer

Deputy Chief Financial Administrative Officer

Director, Budget Division

Director, Financial Management and Administrative Oversight Division

Director, Business Operations and Policy Compliance Division

Director, Performance Management and Employee Programs Division

Freedom of Information Act Officer

Enforcement and Compliance

Assistant Secretary for Enforcement and Compliance

Deputy Assistant Secretary for Enforcement and Compliance

Director, Office of Foreign Trade Zones Staff

Director, Office of Operations Support

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations

Executive Director, Antidumping and Countervailing Duty Operations

Director, Office of Antidumping and Countervailing Duty Enforcement I
 Director, Office of Antidumping and Countervailing Duty Enforcement II
 Director, Office of Antidumping and Countervailing Duty Enforcement III
 Director, Office of Antidumping and Countervailing Duty Enforcement IV
 Director, Office of Antidumping and Countervailing Duty Enforcement V
 Director, Office of Antidumping and Countervailing Duty Enforcement VI
 Director, Office of Antidumping and Countervailing Duty Enforcement VII
 Deputy Assistant Secretary for Policy & Negotiations
 Director, Office of Trade Agreements Negotiations and Compliance
 Director, Office of Accounting
 Director, Office of Policy

Global Markets

Assistant Secretary of Global Markets and Director General for the US&FCS
 Deputy Director General
 Principal Deputy Assistant Secretary
 Executive Director, Advocacy Center
 Director, Business Information and Technology Office
 Director, Global Knowledge Center
 Director, Office of Budget
 Director, Office of Foreign Service Human Capital
 Director, Office of Strategic Planning
 Director, Office of Administrative Services
 Executive Director, SelectUSA
 Deputy Assistant Secretary for U.S. Field
 National U.S. Field Director
 Deputy Assistant Secretary for Asia
 Executive Director for Asia
 Director, Office of the ASEAN and Pacific Basin
 Director, Office of East Asia and APEC

Director, Office of South Asia

Deputy Assistant Secretary for China, Hong Kong, and Mongolia

Executive Director for China, Hong Kong, and Mongolia

Director, Office of China, Hong Kong, and Mongolia

Deputy Assistant Secretary for Western Hemispheres

Executive Director for Western Hemispheres

Director, Office of North and Central America

Director, Office of South America

Deputy Assistant Secretary for Europe, Middle East, and Africa

Executive Deputy Assistant Secretary for Europe, Middle East, and Africa

Executive Director for Europe and Eurasia

Director, Office of Europe Country Affairs

Director, Office of the European Union

Director, Office of Russia, Ukraine, and Eurasia

Executive Director for Africa and Middle East

Director, Office of the Middle East and North Africa

Director, Office of Sub-Saharan Africa

Industry and Analysis

Assistant Secretary for Industry and Analysis

Deputy Assistant Secretary for Industry and Analysis

Trade Agreements Secretariat

Executive Director, Office of Trade Programs and Strategic Partnerships

Director, Trade Promotion Programs

Director, Strategic Partnerships

Director, Office of Advisory Committees and Industry Outreach

Director, Office of Planning, Coordination and Management

Deputy Assistant Secretary for Services

Director, Office of Financial and Insurance Industries

Director, Office of Digital Service Industries

Director, Office of Supply Chain, Professional and Business Services

Executive Director for National Travel and Tourism Office

Director, Office of Travel and Tourism Industries

Deputy Assistant Secretary for Trade Policy and Analysis

Director, Office of Standards and Investment Policy

Director, Office of Trade and Economic Analysis

Director, Office of Trade Negotiations and Analysis

Director, Office of Intellectual Property Rights

Deputy Assistant Secretary for Manufacturing

Director, Office of Energy and Environmental Industries

Director, Office of Transportation and Machinery

Director, Office of Health and Information Technologies

Deputy Assistant Secretary for Textiles, Consumer Goods, and Materials

Director, Office of Textiles and Apparel

Director, Office of Materials

Director, Office of Consumer Goods

MINORITY BUSINESS DEVELOPMENT AGENCY

Chief Counsel

Freedom of Information Officer

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

Director for Administration and Chief Financial Officer

Chief, Management and Organization Office

NIST Counsel

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Under Secretary

Deputy Under Secretary for Operations

Chief, Resource and Operations Management

Director, Office of Communications and External Affairs

Director, Office of Marine and Aviation Operations

General Counsel

Deputy General Counsel

Assistant Administrator for National Ocean Services

Deputy Assistant Administrator for National Ocean Services

Assistant Administrator for National Marine Fisheries Service

Deputy Assistant Administrator for Regulatory Programs for National Marine Fisheries Service

Assistant Administrator for National Weather Services

Deputy Assistant Administrator for National Weather Services

Assistant Administrator for National Environmental Satellite, Data, and Information Service

Deputy Assistant Administrator for National Environmental Satellite, Data, and Information Service

Assistant Administrator for Oceanic and Atmospheric Research

Deputy Assistant Administrator for Programs & Administration (Oceanic and Atmospheric Research)

Assistant Administrator for Program, Planning and Integration

Chief Administrative Officer

Chief Financial Officer

Chief Information Officer

Director, Acquisition and Grants Office

Deputy Director, Acquisition and Grants Office

Head of Contracting Offices, Acquisition and Grants Office

Director, Workforce Management Office

Senior Advisor for International Affairs

Director, Office of Legislation & Intergovernmental Affairs

Freedom of Information Officer

NATIONAL TECHNICAL INFORMATION SERVICE

Director

Deputy Director

Chief Financial Officer/Associate Director for Finance and Administration

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Deputy Assistant Secretary

Chief Counsel

Deputy Chief Counsel

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